

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

HERMA GOPON-ROSEL,
Plaintiff,

v.

Case No. 07-C-323

**PLASTICS ENGINEERING COMPANY,
ASSURANT EMPLOYEE BENEFITS,
PLASTICS ENGINEERING COMPANY
EMPLOYEE WELFARE PLAN and
UNION SECURITY INSURANCE COMPANY,
Defendants.**

ORDER

Plaintiff Herma Gopon-Rosel originally filed this action in state court, alleging that defendant Plastics Engineering Company ("PEC") had negligently misrepresented facts pertaining to plaintiff's employee benefits. On April 4, 2007, PEC removed this action to federal court, asserting that plaintiff's claim was governed by the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1331 and 1332. On April 24, 2007, PEC filed a motion to dismiss arguing that plaintiff's negligent misrepresentation claim was preempted by ERISA and that PEC was not a proper defendant to an ERISA action for wrongful denial of benefits.

On May 10, 2007, plaintiff filed an amended complaint recharacterizing her claims and adding several additional defendants, and a response to PEC's motion to dismiss suggesting that the amended complaint cured any defects in her original complaint. Plaintiff also filed PEC's written consent to the amendment. Plaintiff later filed a motion for leave to file the amended complaint. Given PEC's consent to plaintiff's amendment, I will grant plaintiff's motion. See Fed. R. Civ. P. 15(a). Further, PEC recently answered plaintiff's amended

complaint, and I will treat such answer as an abandonment of its motion to dismiss and will deny such motion without further discussion.

Therefore,

IT IS ORDERED that Plastics Engineering Company's motion to dismiss is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file an amended complaint is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 8 day of June, 2007.

/s

LYNN ADELMAN

District Judge